

Managing the Backlash? The PACE and the Question of Participation Rights for Russia

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In the shadow of the European Court of Human Rights, the activities of the Parliamentary Assembly of the Council of Europe (PACE) only rarely find their way into academic or public discourse, in particular when they focus on technical matters such as amending its rules of procedure. However, [this week in Strasbourg](#), the 306 PACE members eligible to vote had to face a crucial choice: Should they approve the amendment on the participation rights of national delegations, thus allowing Russia's 18-member delegation to regain at least some participation rights, and hopefully resolve the looming financial crisis faced by the Council of Europe – or not?

Motor vs Buffer: The Role of the PACE in an Age of Backlash

The [PACE](#), which likes to describe itself as the “motor” of the European human rights system, serves crucial functions in the Council of Europe (CoE). Consisting of national delegations sent by the 47 member states, it offers a unique forum for debate on crucial European matters and enables a dialogue with national governments. On a procedural level, its most important task lies in the election of judges of the European Court of Human Rights as well as the Secretary General, the Commissioner for Human Rights and other senior personnel.

Yet, current developments also leave their mark on the parliamentary body of the CoE. In an [alarming resolution](#) in October 2017, the Assembly openly voiced its concern over the “momentous political challenges, both within and outside Europe's border”, such as “the rise of Euroscepticism, nationalism, populism, and xenophobia”. Most specifically, it criticized the “various attempts to undermine the authority of the European Court of Human Rights, by the lack of political will on the part of certain States parties”. Believing that the “Council of Europe is today best placed to help meet the challenges raised by growing nationalism and avoid the building of new walls”, the [Ad hoc Committee on the role and mission of the Parliamentary Assembly](#) was established.

Sanctioning Powers of the PACE

During this process of reform and harmonization, it soon transpired that challenging the credentials of national delegations and the sanction system of the PACE was a [major point of contention](#). The delegations pushing for a change of the existing

regime can be roughly divided in three factions: First, a small number of delegations, which wished to *exclude* the possibility to challenge credentials on substantial grounds (Serbia) or to limit it to the most fundamental breeches of core values (Greece). Second, a group of delegations, which attempted to *reinforce* the existing mechanism by extending the grounds for challenging credentials (Ukraine, ALDE, EPP/CD). Third, the majority of delegations, which opted to either *amend the quorum* required (Switzerland, the Netherlands, Norway) or to *introduce a graduation* of sanctions (Slovak Republic, UEL, Belgium, Malta).

The PACE has only [very limited options to sanction state parties](#) which are in violation of the CoE standards. So far, it has rarely threatened to recommend a state party for expulsion from the CoE, e.g. [Greece \(1968\)](#), but in several cases decided to suspend a national delegation or remove the voting rights of delegates, such as [recently](#) in the context of the Azerbaijani corruption scandal. Moreover, according to [Rules 8 and 9 of the Rules of Procedure of the Assembly](#), the credentials of national delegations can be challenged on procedural and substantive grounds. The latter can be argued when a state party committed serious violations of the basic principles of the CoE or persistently failed to honor its obligations and to cooperate with the Assembly's monitoring procedure.

So how has the rarely used sanctioning procedure of the PACE turned into such a vital question for the European Convention system?

The PACE between a Rock and a Hard Place: Russia and the Budget Crisis

The origins of the current dispute go back to the Russian annexation of Crimea. In April 2014, the PACE decided to [suspend the voting rights](#) of the Russian delegation. This was the second time Russia had to face this sanction after it was already barred from voting in 2000 over the [situation in Chechnya](#). Yet, from 2016 on, Russia decided [not to re-submit its credentials](#) for ratification after it had failed to comply with [several](#) PACE resolutions. Moreover, the Russian Ministry of Foreign Affairs [announced](#) in 2017 that it had “decided to suspend payment of its contribution to the budget of the Council of Europe for 2017 until full and unconditional restoration of the credentials of the delegation”. In the ordinary budget of the CoE, Russia's contribution [accounts](#) for 33 million euros, which amounts to one of the [major contributors of the CoE](#) and double the total budget of the PACE. This has created [a massive budget crisis](#) of the CoE, recently aggravated by the Turkish decision to [significantly reduce](#) its contribution.

Against this backdrop, the [procedural amendment](#) proposed by Rapporteur Petra de Sutter would, among others, (i) significantly increase the quorum required to initiate a challenge to unratified credentials of national delegations (from 30 to 54), and (ii) require a qualified majority of two-thirds of the votes to reject credentials, as well as (iii) exempt the right to elect judges and senior CoE personnel from the sanction procedure. While the Committee on Rules of Procedure emphasized that this would reinforce the legitimacy and authority of the Assembly's decisions when deciding

on a challenge or a reconsideration of credentials, it might have [the opposite effect](#). Most importantly, it would deprive the PACE of crucial sanctioning procedures, a move [Drzemczewski and Dzehtsiarou](#) interpret as “suicidal”. While [Lize R. Glas](#) correctly points out that the resolutions sanctioning Russia would have even passed the new threshold, the amendment can be interpreted as a political appeasement of Russia. This also turned out to be the major stumbling block for many delegates in the [day-long debate](#) on Tuesday.

Is this the End, my Friend?

In a very heated debate, more than [70 speakers](#) took to the floor on Tuesday. While Russia was not mentioned once in the report, it was addressed in each and every oral remark. Already in her introduction, Rapporteur Petra de Sutter was adamant in uncoupling the question of reforming the sanction regime from the debate on the behavior of Russia, clearly pointing out the many violations of international law committed by Russia in recent years. In her view, the main question underlying the reform process is: Should challenges to the credentials of national delegations be used as a sanction mechanism – or not? While the Committee had decided to keep it as a tool to sanction state parties, providing clarity on the criteria would certainly improve its legitimacy. Moreover, she highlighted that the continued failure to provide credentials, such as done by Russia since 2016, would amount to a violation of [Art 25 CoE Statute](#). In a similar vein, Secretary General Thorbjørn Jagland appealed to Russia’s critics to consider taking action under Art. 8 and request the Committee of Ministers to consider its expulsion from the Council.

Yet, in the end, the Assembly remained too divided. After many delegates criticized not only the signal this amendment would send to Russia, but also the inexplicable rush of the vote, de Sutter ultimately petitioned to move the matter back to the Committee. This was [accepted](#) by 99 to 79 delegates, with 16 abstentions. De Sutter remained hopeful that PACE’s sanction regime can be discussed in the future time “when the problem, the elephant in the room, would be gone”. While the amendment of the Rules of Procedure is postponed to an unspecified future session, the future of the relationship between Russia and the PACE certainly looks bleak. As the vote on the amendment attempted to cut the guardian knot of the CoE, keeping Russia in the fold without losing face while solving the budget crisis, the problems facing the future of the Convention system turned out to be too complex for a procedural solution.

